

EXHIBIT 2

1 are different than in the specifications, and then you
2 get into litigation, and lawyers concoct entirely
3 different scenarios from what the real words actually
4 used 10 years ago or 20 years ago mean. That's what
5 the problem is. But we're dealing with it in the
6 framework that's been dictated to us. So that's what
7 we have to use.

8 Who is the person of ordinary skill in the
9 art at the time of filing? And how do I know who that
10 person is from your standpoint?

11 MR. ROBERTSON: Your Honor, I believe in the
12 past we've said it's somebody with probably a
13 bachelor's of science or equivalent in the computer
14 science, computer architecture, that probably has some
15 experience, perhaps one to two years in procurement,
16 electronic sourcing.

17 Does the patent expressly recite that? No.
18 But I think we've had experts in the past who have
19 looked at it and said that would be the person of
20 ordinary skill in the art. And that's pretty much what
21 we have with regard to the inventors that were involved
22 here.

23 There were four inventors. They were
24 employed by a company called Fisher Scientific in their
25 information and technology department. And they have

1 worked on a series of projects over a number of years
2 that are described in the background of the invention
3 to help manage Fisher Scientific's requisitions and
4 inventory. And then they struck upon this electronic
5 sourcing invention, which, as I say, is described in
6 the three patents.

7 THE COURT: Are you all in agreement about
8 who is the person of ordinary skill in the art? Do you
9 agree?

10 MR. McDONALD: I think Mr. Robertson
11 characterized it as generally how I would as well, Your
12 Honor.

13 THE COURT: But neither one of you, unless I
14 can't read, mention that in your papers.

15 MR. McDONALD: No. I think as we're using
16 the specification and intrinsic record here. Whether
17 somebody has two years of industry experience or eight
18 doesn't really move the answer to the questions. So I
19 don't think either one of us really focused on that.

20 THE COURT: How am I supposed to know how the
21 person of ordinary skill in the art would interpret the
22 words used in this patent without hearing from a person
23 of ordinary skill in the art?

24 MR. ROBERTSON: Well, Your Honor, with
25 respect --